

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 31 Subcontract Cost Principles

Subject: 31.2 Precontract Cost Agreements

PURPOSE: This standard practice (SP) establishes the procedures to be followed for issuing a precontract cost agreement when the Laboratory must allow a subcontractor to begin work before a subcontract can be issued.

POLICY: A precontract cost agreement may be issued to a potential subcontractor when it is imperative that the subcontractor begin work immediately and there is insufficient time to negotiate and award a subcontract or letter subcontract.

SCOPE: This SP applies to all precontract cost agreements.

DEFINITIONS:

Precontract Cost Agreement

A precontract cost agreement is an instrument for establishing a maximum cost limitation to cover performance pending the issuance of a subcontract. Using a precontract cost agreement, the Laboratory authorizes a subcontractor to begin work to avoid any adverse programmatic impact before beginning work because of anticipated lengthy negotiations, required preaward audit, approval requirements, etc.

PROCEDURES:

Conditions

As a minimum, each agreement shall contain a specific time period, cost limitation, University data and property rights, types of costs considered allowable under the agreement, statement of work, termination provisions, *Date of Incurrence of Costs* clause, and any other references, as necessary.

Cost Limitations

A cost limitation based on discussions with the requester and the subcontractor shall be established. A written authorization from the requester must support the agreed upon maximum expenditure of funds and the services required by the precontract cost agreement.

The attached sample agreement (Exhibit 31.2a, *Sample Precontract Cost Agreement*), appropriately completed, should be used as the circumstances require.

All precontract cost agreements shall be subject to the following limitations:

- All precontract cost agreements must be authorized by the Procurement Manager;
- The period covered shall not exceed 45 working days and shall not be extended or renewed without the approval of the Procurement Manager;
- Retroactive agreements shall be issued only after all

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requirements of SP 1.3, *Ratification of Unauthorized Commitments*, have been complied with. The predating of contractual agreements shall not be allowed; and

- Precontract cost agreements shall not authorize or allow for the acceptance, delivery, or furnishing of any goods or services from the potential subcontractor until the subcontract is awarded.

Subcontract Clause

Include the *Date of Incurrence of Cost* provision in all subcontracts for which there was a precontract cost agreement (see Exhibit 31.2a, *Sample Precontract Cost Agreement*).

REVIEW/ APPROVAL:

Procurement Manager

The Procurement Manager must approve all precontract cost agreements and their extensions or renewals.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist must:

- In coordination with the requester, establish the maximum expenditure of funding and the services to be provided under the agreement;
- Prepare the precontract cost agreement, using the guidelines herein; and
- Obtain approval from the Procurement Manager before issuing, extending, or renewing a precontract cost agreement.

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Exhibit: 31.2.a Sample Precontract Cost Agreement

[*Date*]

[*Offeror's Name and Address*]

Subject: Precontract Cost Agreement

Reference: Proposed Subcontract [*number*]
University Statement of Work Entitled [*title*]

You are currently in a favorable position to be awarded the above subcontract. Because this subcontract cannot be awarded in sufficient time to avoid adverse programmatic impact, you are hereby authorized to commence work in pursuance of the objectives and requirements of the University's Statement of Work entitled [*title*], attached hereto. This authorization is limited to allowable costs incurred during the period of [*date*] through [*date*], which do not exceed [*amount*], exclusive of fee or profit.

Prior to execution of the proposed subcontract, the negotiation of fee will be based on total estimated costs, including any precontract costs properly incurred pursuant to this authorization. The subcontract will include the substance of the following provision:

Date of Incurrence of Costs. The subcontractor shall be entitled to reimbursement for costs incurred in an amount not to exceed [*amount*] on or after [*date*], which, if incurred after this subcontract had been entered into, would have been reimbursable under the provisions of this subcontract.

In the event that the proposed subcontract is not executed as originally intended, the maximum liability of the University shall not, in any event, exceed [*amount*] with respect to this authorization, and no fee or profit shall be allowable with respect to the allowable costs hereunder.

The University shall have full right and title to all products, including data, that are developed, fabricated, purchased, or otherwise acquired or produced with respect to this agreement. The subcontractor shall dispose of all such goods as directed by the University and at the University's expense.

The University may, by written notice to the subcontractor, stop work under this agreement or terminate this agreement in whole or in part. Upon receipt of such notice, the subcontractor shall immediately comply with all of the directions contained therein.

Allowable costs pursuant to this agreement shall be limited to the following:

[*Listing of allowable costs*]

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Exhibit: 31.2.a Sample Precontract Cost Agreement

This authorization is expressly limited to the terms included herein.

By execution of this agreement, [*Subcontractor*] pledges itself to good faith negotiations in reaching agreement on the terms and costs of the referenced subcontract.

Please execute and return one copy of this agreement to the attention of [*procurement specialist*].

AUTHORIZED:

The Regents of the University of California

By _____

Title _____

Date _____

ACCEPTED:

[*Subcontractor*]

By _____

Title _____

Date _____